

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Justice Joyce L. Kennard, Chair
Heather Anderson, Senior Attorney, 415-865-7691

DATE: August 26, 2003

SUBJECT: Appellate Procedure: Service of Appellate Papers on the Attorney General and Other Public Officers (adopt Cal. Rules of Court, rule 44.5; amend rules 14(b), 15(e), 28(f), and 56(b) and (k); and revise form APP-001) (Action Required)

Issue Statement

Recent legislation has expanded the types of cases in which appellate briefs or petitions must be served on the Attorney General and other public officers. The current provisions in rules 14(b), 15(e), 28(f), and 56(b) and (k) and form APP-001 that refer only to such service requirements in unfair competition cases therefore need to be updated.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Adopt new rule 44.5 to specify the procedures that must be followed when service on the Attorney General or other public officer is required by a statute or by rule;
2. Amend rules 14(b), 15(e), 28(c), and 56(b) and (k) to delete specific provisions relating to service on the Attorney General and to insert appropriate cross-reference to new rule 44.5.
3. Revise form APP-001 to include check-off boxes for all of the statutory provisions that require service of briefs or petitions on the Attorney General or other public officer.

The text of the proposed new rule 44.5, the amendments to rules 14(b), 15(e), 28(c), and 56(b) and (k), and the revised form APP-001¹ are attached at pages 5-10.

Rationale for Recommendation

Currently, rule 15(e), which applies only in Court of Appeal matters, addresses the circumstances in which a copy of an appellate brief has to be served on the Attorney General. In addition to listing the general circumstances requiring such service, such as criminal cases or cases in which the state is named, this rule incorporates a statutory requirement for service on the Attorney General and the district attorney in unfair competition cases:

(2) In an unfair competition proceeding to which Business and Professions Code section 17209 applies, each brief must be served on the Attorney General and on the district attorney of the county in which the action was filed. The brief must be served within three days of its filing, unless the presiding justice extends that period for good cause.

Related provisions regarding service of briefs and writ petitions on the Attorney General also appear in rules 14(b), 28(f)(3), and 56(b) and (k) and in form APP-001, the *Civil Case Information Statement*.

In 2001, the Legislature enacted another statutory provision, Government Code section 12656, requiring service on the Attorney General in qui tam actions under the False Claims Act. In 2002, additional legislation was enacted requiring service on the Attorney General in certain civil rights cases (see Stats. 2002, ch. 244).

In light of these new statutory requirements, the Appellate Advisory Committee proposes the adoption of new rule 44.5, which takes a more general approach to addressing these statutory service requirements. Rather than having the rules simply repeat specific statutory requirements for service on the Attorney General, proposed rule 44.5 would specify the procedures that must be followed when service on the Attorney General or other public officer is required by a statute or by rule. This general approach would eliminate the need to update multiple rules each time a new statute requiring service on a public official is adopted. New rule 44.5, which would apply to both Supreme Court and Court of Appeal matters, would also incorporate the requirements from current rule 15(e) concerning general classes of cases in which service on the attorney general is required and the requirements from current rules 14(b) and 56(k) concerning identification of applicable service requirements on the cover of the petition or brief.

¹ Please note that, based upon comments received on another proposal circulated for comment this spring, the committee is also recommending that this form be renumbered as APP-004.

In conjunction with proposed new rule 44.5, the committee proposes that rules 15, 14(b), 28(f), and 56(b) and (k) be amended. All of the specific provisions relating to service on the Attorney General would be deleted from rule 15 and replaced with a cross-reference to new rule 44.5. With these amendments, the remainder of the service-related provisions of rule 15 could be consolidated into a single subdivision. The cross-references in rules 28(f) and 56(b) would also be corrected, and rules 14(b) and 56(k) would be deleted.

The committee also recommends that Judicial Council form APP-001, the *Civil Case Information Statement* that appellants must file with the Court of Appeal shortly after filing their notice of appeal, be revised. Currently this form includes, among things, a box for appellants to check if the case involves an unfair competition action under Business and Professions Code section 17200 et seq. The form then refers appellants to rule 15(e). The committee proposes deleting this provision and replacing it with check boxes for all of the statutory provisions that require service of briefs or petitions on the Attorney General or other public officer (see Part I, item E on the form). This will alert both appellants and appellate court clerks if special service requirements apply to the case.

Alternative Actions Considered

The committee considered, but ultimately rejected, the idea of adding to proposed rule 44.5 references to all of the statutory service requirements. The committee believed that the rules of court generally should not simply restate statutory obligations. Furthermore, a rule reiterating statutory requirements for service in specified situations would need to be modified each time any new statutory service requirement was adopted. Because of the time frame for circulating rule proposals for comment, this would cause the rule to be out-of-date for at least six months every time such a new statutory requirement is adopted. In contrast, the list of statutes requiring service on the Attorney General or other public officials that is proposed for revised form APP-001 could be updated through technical amendment, without the time lag associated with the regular comment and amendment process, because it does not create a substantive service obligation but instead simply asks appellants to identify applicable statutory provisions.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2003 comment process. Seven individuals or organizations submitted comments on this proposal. Overall, four commentators agreed with the proposal without suggesting changes, three agreed with the proposal only if modified, and none disagreed with the proposal.²

² The full text of the comments that were submitted and the committee responses to these comments is set forth on the accompanying comment chart, beginning on page 11.

The three main substantive comments focused on the general concept of deleting the references to the specific statutory service requirements in the rules and replacing these with the new section on form APP-001 listing these requirements. Mr. Saul Bercovitch, commenting on behalf of the State Bar of California's Committee on Appellate Courts, approved of this approach, noting that the new section on the form would aid the public and practitioners by bringing attention to these service requirements. On the other hand, Ms. Cheryl Geyerman, Chair of the Appellate Court Committee of the San Diego County Bar Association, expressed concern that deleting the statutory references from the rule would create a trap for the unwary because the rule would no longer alert litigants and their attorneys of these service requirements. Ms. Diana Herbert, commenting on behalf of the Appellate Court Clerks' Association, stated that the association opposes adding the section on service requirements to form APP-001 because this makes the form three pages long; the association suggests that every effort be made to keep the form to two pages.

As discussed above, the committee rejected the idea of reiterating all of the statutory service requirements in proposed new rule 44.5. However, to address the San Diego County Bar's concerns, the committee recommends that there be an Advisory Committee Comment to rule 44.5 noting that form APP-001 includes a list of statutory service requirements, as follows:

Advisory Committee Comment

Rule 44.5 refers to statutes that require a party to serve documents on a nonparty public officer or agency. For a list of such statutory requirements, please see Judicial Council form APP-001, the *Civil Case Information Statement*.

To address the Appellate Court Clerks Association's concerns while still keeping the list of statutory service requirements in the form, the committee has also reformatted APP-001 as a two-page form.

Implementation Requirements and Costs

Completing the production and publication of these rules and form would require some minimal additional staff time and expense on the part of the Administrative Office of the Courts (AOC). However, adoption of new rule 44.5 should reduce the need for future rule amendments addressing statutory service requirements on the Attorney General or other public officials, thereby potentially reducing future AOC costs. Implementing this proposal is not expected to impose any requirements or costs on litigants or courts.

Attachments

Effective January 1, 2004, rule 44.5 of the California Rules of Court is adopted, rules 14(b), 15(e), 28(f)(3), and 56(b) and (k) are amended, and form APP-001 is revised and renumbered to read:

Rule 44.5 Service on Public Officer or Agency

(a) [Service on the Attorney General] In addition to any statutory requirements for service of briefs on public officers or agencies, a party must serve its brief or petition on the Attorney General if the brief or petition:

(1) Questions the constitutionality of a state statute; or

(2) Is filed on behalf of the State of California, a county, or an officer whom the Attorney General may lawfully represent in:

(A) a criminal case,

(B) a case in which the state or a state officer in his or her official capacity is a party, and

(C) a case in which a county is a party, unless the county's interest conflicts with that of the state or a state officer in his or her official capacity.

(b) [Proof of service] When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the party must file proof of such service with the document unless a statute permits service after the document is filed, in which case the proof of service must be filed immediately after the document is served on the public officer or agency.

(c) [Identification on cover] When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the cover of the document must contain a statement that identifies the statute or rule requiring service of the document on the public officer or agency in substantially the following form: "Service on [insert name of the officer or agency] required by [insert citation to the statute or rule]."

Advisory Committee Comment

Rule 44.5 refers to statutes that require a party to serve documents on a nonparty public officer or agency. For a list of such statutory requirements, please see Judicial Council form APP-004, the *Civil Case Information Statement*.

1 **Rule 14. Contents and form of briefs**

2
3 (a) * * *

4
5 (b) [Form]

6
7 (1) – (9) * * *

8
9 (10) The cover, preferably of recycled stock, must be in the color prescribed by
10 rule 44.5(c) and must state:

11
12 (A) – (E) * * *

13
14 ~~(F) in an unfair competition proceeding to which Business and Professions~~
15 ~~Code section 17209 applies, the following notice: "Unfair competition~~
16 ~~case. (See Bus. & Prof. Code, § 17209, and Cal. Rules of Court, rule~~
17 ~~15(e)(2).)"~~
18

19 **Rule 15. Service and filing of briefs**

20
21 (a)–(b) * * *

22
23 ~~(c) — Service on superior court clerk~~

24 ~~A copy of each brief must be served on the superior court clerk for delivery to the~~
25 ~~trial judge.~~
26

27 ~~(d) — Service on Supreme Court~~

28 ~~Five copies of each brief filed in a civil appeal must be served on the Supreme~~
29 ~~Court.~~
30

31 ~~(e) — Service on Attorney General and district attorney~~

32
33 ~~(1) A brief for the State of California, a county, or an officer whom the Attorney~~
34 ~~General may lawfully represent must be served on the Attorney General:~~
35

36 ~~(A) in all criminal cases;~~

37
38 ~~(B) in all cases in which the state or a state officer in his or her official~~
39 ~~capacity is a party; and~~
40

41 ~~(C) in all cases in which a county is a party, unless the county's interest~~
42 ~~conflicts with that of the state or a state officer in his or her official~~
43 ~~capacity.~~

1 ~~(2) In an unfair competition proceeding to which Business and Professions Code~~
2 ~~section 17209 applies, each brief must be served on the Attorney General and~~
3 ~~on the district attorney of the county in which the action was filed. The brief~~
4 ~~must be served within three days of its filing, unless the presiding justice~~
5 ~~extends that period for good cause.~~

6
7 **(c) Service**

8
9 (1) A copy of each brief must be served on the superior court clerk for delivery
10 to the trial judge.

11
12 (2) Five copies of each brief filed in a civil appeal must be served on the
13 Supreme Court.

14
15 (3) A copy of each brief must be served on a public officer or agency when
16 required by rule 44.5.

17
18 **Advisory Committee Comment ~~(2002)~~(2004)**

19
20 **Subdivision (c).** Revised subdivision (c)(1), like former rule 16(b), provides that one
21 copy of each brief must be served on the superior court clerk, who must in turn deliver it
22 to the trial judge. But the former provision also declared that the clerk "need not maintain
23 a copy in the [superior] court file." Subdivision (c) of revised rule 15 deletes this
24 declaration as an unnecessary directive to the clerk.

25
26 **Subdivision ~~(d)~~.** Revised subdivision ~~(d)~~(c)(2) restates in a more appropriate place a
27 requirement of rule 44(b)(2)(ii). In the revised rule-as in the former rule-the word "brief"
28 means only (1) an appellant's opening brief, (2) a respondent's brief, (3) an appellant's
29 reply brief, (4) a petition for rehearing, (5) an answer thereto, or (6) an amicus curiae
30 brief. It follows that no other documents or papers filed in the Court of Appeal, whatever
31 their nature, should be served on the Supreme Court. Further, in the revised rule-as in the
32 former rule-only briefs filed in the Court of Appeal "in a civil appeal" must be served on
33 the Supreme Court. It follows that no briefs filed in the Court of Appeal in criminal
34 appeals or in original proceedings should be served on the Supreme Court. These are not
35 substantive changes.

36
37 **Subdivision ~~(e)~~.** Revised subdivision ~~(e)~~(2) is former rule 16(d) (eff. July 1, 2000). The
38 second sentence of the revised subdivision states the rule of *Californians for Population*
39 *Stabilization v. Hewlett Packard Co.* (1997) 58 Cal.App.4th 273, 282-285.

1 **Rule 28. Petition for review**

2
3 (a)–(e) * * *

4
5 (f) **Additional requirements**

6
7 (1)–(2) * * *

8
9 (3) ~~In an unfair competition proceeding to which Business and Professions~~
10 ~~Code section 17209 applies, the petition must also be served as required by~~
11 ~~rule 15(e)(2). A copy of each brief must be served on a public officer or~~
12 ~~agency when required by statute or by rule 44.5.~~

13
14 **Rule 56. Original proceedings**

15
16 (a) * * *

17
18 (b) **[Points and authorities and service]** A petition for the issuance of such a writ shall
19 be accompanied by points and authorities and by proof of service of both on the
20 respondent and any real party in interest named in the petition. The proof of service
21 shall name each party represented by each attorney served; a petition accompanied
22 by a defective proof of service shall be filed, but if a proper proof of service is not
23 filed within five days, the court may strike the petition or impose a lesser sanction.
24 No statement in opposition to the petition is required unless requested by the court,
25 but within five days after service and filing, the respondent or any real party in
26 interest or both, separately or jointly, may serve and file points and authorities in
27 opposition and a statement of any fact considered material not included in the
28 petition. The court in its discretion (1) may allow the filing of the petition without
29 service, and (2) may deny the petition or issue an alternative writ without first
30 requesting the filing of opposition. Additionally, ~~service in unfair competition cases~~
31 ~~under Business and Professions Code section 17200 et seq. must comply with rule~~
32 ~~15(e)(2). the petition must be served on a public officer or agency when required by~~
33 ~~statute or rule 44.5.~~

34
35 (c)–(j) * * *

36
37 ~~(k) [Unfair competition cases] In an unfair competition proceeding under Business and~~
38 ~~Professions Code section 17200 et seq., each brief and each petition shall contain~~
39 ~~the following statement on the front cover: "Unfair competition case. (See Bus. &~~
40 ~~Prof. Code, § 17209 and Cal. Rules of Court, rule 15(e)(2).)"~~

CIVIL CASE INFORMATION STATEMENT		Court of Appeal Case Number (if known):
COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____		FOR COURT USE ONLY DRAFT 5 08/27/03
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): _____		
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FAX NO. (Optional):	
APPELLANT: RESPONDENT:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		Superior Court Case Number:
JUDGES (all who participated in case):		
NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 10 days after the clerk mails you a notice that this form must be filed. You must attach to this form (1) a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 2(c) for definition of "entered") and (2) proof of service of this form on all parties to the appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2), or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).		

PART I – APPEAL INFORMATION**A. APPEALABILITY**

1. Appeal is from:

- ☐ Judgment after jury trial
☐ Judgment after court trial
☐ Default judgment
☐ Judgment after an order granting a summary judgment motion
☐ Judgment of dismissal under Code Civ. Proc., §§ 581d, 583.250, 583.360, or 583.430
☐ Judgment of dismissal after an order sustaining a demurrer
☐ An order after judgment under Code Civ. Proc., § 904.1(a)(2)
☐ An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
☐ Other (describe and specify code section that authorizes this appeal):

2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?

☐ Yes ☐ No If no, please explain why the judgment is appealable:

B. TIMELINESS OF APPEAL (Provide all applicable dates.)

1. Date of entry of judgment or order appealed from: ____/____/____
 2. Date that notice of entry of judgment or a copy of the judgment was mailed by the clerk or served by a party under California Rules of Court, rule 2: ____/____/____
 3. Was a motion for new trial, judgment notwithstanding the verdict, reconsideration, or to vacate the judgment made and denied?
☐ Yes ☐ No If yes, please specify the type of motion:
 Date motion filed: ____/____/____ Date denied: ____/____/____ Date denial served: ____/____/____
 4. Date notice of ☐ appeal or ☐ cross-appeal filed: ____/____/____

C. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal. ☐ Yes ☐ No If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.

APPELLATE CASE TITLE: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	SUPERIOR COURT CASE NUMBER: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
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D. APPELLATE CASE HISTORY *(Provide additional information, if necessary, on attachment I.D.)*

Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court? ☐ Yes ☐ No If yes, insert name of appellate court:

Appellate court case no.: Title of case:
 Name of trial court: Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a brief or a petition, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 44.5 or a statute? ☐ Yes ☐ No *If yes, please indicate the rule or statute that applies.*

- | | |
|---|--|
| <input type="checkbox"/> Rule 44.5(a)
<input type="checkbox"/> Bus. & Prof. Code, § 17209 (Unfair Competition Act)
<input type="checkbox"/> Bus. & Prof. Code, § 17536.5 (False advertising)
<input type="checkbox"/> Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney)
<input type="checkbox"/> Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing) | <input type="checkbox"/> Gov. Code, § 4461 (Disabled access to public buildings)
<input type="checkbox"/> Gov. Code, § 12656(a) (False Claims Act)
<input type="checkbox"/> Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)
<input type="checkbox"/> Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)
<input type="checkbox"/> Other <i>(please specify statute):</i> |
|---|--|

NOTE: The rule and statutory provisions listed above require service of a copy of a party's brief or petition and brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply. (See, e.g., Code Civ. Proc., § 1355; Gov. Code, § 946.6(d); Pub. Resources Code, § 21167.7.)

PART II – NATURE OF ACTION

A. Nature of action *(check all that apply):*

1. ☐ Conservatorship
2. ☐ Contract
3. ☐ Eminent domain
4. ☐ Equitable action a. ☐ Declaratory relief b. ☐ Other *(describe):*

5. ☐ Family law
6. ☐ Guardianship
7. ☐ Probate
8. ☐ Real property rights a. ☐ Title of real property b. ☐ Other *(describe):*

9. ☐ Tort

a. <input type="checkbox"/> Medical malpractice	b. <input type="checkbox"/> Product liability
c. <input type="checkbox"/> Other personal injury	d. <input type="checkbox"/> Personal property
e. <input type="checkbox"/> Other tort <i>(describe):</i>	

10. ☐ Trust proceedings
11. ☐ Writ proceedings in superior court

a. <input type="checkbox"/> Mandate (Code Civ. Proc., § 1085)	b. <input type="checkbox"/> Administrative mandate (Code Civ. Proc., § 1094.5)
c. <input type="checkbox"/> Prohibition (Code Civ. Proc., § 1102)	d. <input type="checkbox"/> Other <i>(describe):</i>

12. ☐ Other action *(describe):*

B. ☐ This appeal is entitled to calendar preference/priority on appeal *(cite authority):*

PART III – PARTY AND ATTORNEY INFORMATION

Please attach to this form a list of all the parties and all their attorneys of record who will participate in the appeal. For the parties, include the following information: the party's name and his or her designation in the trial court proceeding (plaintiff, defendant, etc.). For the attorneys, include the following information: name, State Bar number, mailing address, telephone number, fax number, and e-mail address.

Date:

This statement is prepared and submitted by:



(SIGNATURE OF ATTORNEY OR UNREPRESENTED PARTY)

SPR03-01

Appellate Procedure: Requirement for Service of Briefs or Petitions on the Attorney General and Other Public Officers
 (adopt Cal. Rules of Court, rule 44.5, amend rules 14(b), 15, 28(f)(3), and 56(k) and revise form APP-001)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Gloria Barnes Legal Process Clerk Superior Court of California, County of Santa Cruz	A	N	No comment	No response required.
2.	Mr. Saul Bercovitch State Bar of California Committee on Appellate Courts	A	Y	The Committee endorses this proposal, which would implement various changes by adding new rule 44.5, and amending or deleting parts of rules 14, 15, 28, and 56 in order to identify the circumstances requiring service of briefs on the Attorney General and clarify the procedures for doing so. Upon analysis, the Committee is of the view that the changes encompassed by the proposal are clearly written, make sense, bring clarity to the service requirements on the Attorney General and other public officers, and collect the pertinent provisions in one place. The Committee also commends the proposals' approach that eliminates the need to update the rules each time a new statute requiring service on a public officer is enacted. Finally, the Committee is of the view that the changes to Form App-001 (the Civil Case Information Statement) that would be implemented by proposal would also aid the public and practitioners by bringing attention to these service requirements.	No response required.
3.	Ms. Tonna Brodie Deputy Executive Officer Superior Court of California, County of Ventura	A	N	No comment	No response required.

SPR03-01

Appellate Procedure: Requirement for Service of Briefs or Petitions on the Attorney General and Other Public Officers
(adopt Cal. Rules of Court, rule 44.5, amend rules 14(b), 15, 28(f)(3), and 56(k) and revise form APP-001)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
4.	Mr. Robert Gerard President Orange County Bar Association	A	Y	No comment	No response required.

SPR03-01

Appellate Procedure: Requirement for Service of Briefs or Petitions on the Attorney General and Other Public Officers (adopt Cal. Rules of Court, rule 44.5, amend rules 14(b), 15, 28(f)(3), and 56(k) and revise form APP-001)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
5.	Ms. Cheryl A. Geyerman Chair San Diego Coutny Bar Association Appellate Court Committee.	AM	N	<p>Current rules specify that briefs and petitions must be served on the Attorney General when required by Business and Professions Code section 17209. The Appellate Advisory Committee (“Committee”) notes that recent legislation has created two additional statutes requiring services of briefs and petitions on the Attorney General or other public officer. The Committee proposes new rule 44.5, which eliminates specific reference to the statutes that require such service. The Committee comments such a generalization “would eliminate the need to update the rules each time a new statute requiring service on a public official is adopted.”</p> <p>The Committee’s interest in avoiding future rule revisions is understandable. However, we believe the general approach the Committee takes in proposed rule 44.5 could be a trap for the unwary. Many attorneys are unfamiliar with the specific statutes requiring service of pleadings, whether in a trial court or appellate court, on a public official. Under existing rules, attorneys examining the rules for appellate service requirements generally may learn that such service is necessary. As proposed, rule 44.5 would not provide attorneys an additional opportunity to learn of this specific service requirement. It is more likely attorneys will serve briefs and petitions on a public officer if rule 44.5 specifically references the statutes requiring such service; it is less likely attorneys will note the general reference to service on a public officer and then investigate whether any statute in their case requires it. Specific statutory reference in rule 44.5 will promote greater compliance with the service requirement. We believe the benefit gained through potentially greater compliance with this service requirement outweighs the burden of revising rule 44.5 when additional statutes are created requiring</p>	<p>The committee does not recommend reiterating the statutory requirements in the rule. This would require amending the rule every time a new statutory service requirement is enacted. Instead, the committee recommends that there be an Advisory Committee Comment to rule 44.5 noting that form APP-001 includes a list of statutory service requirements, as follows:</p> <p>Advisory Committee Comment</p> <p>Rule 44.5 refers to statutes that require a party to serve documents on a nonparty public officer or agency. For a list of these statutory requirements, please see Judicial Council form APP-001, the <i>Civil Case Information Statement</i>.</p>

SPR03-01

Appellate Procedure: Requirement for Service of Briefs or Petitions on the Attorney General and Other Public Officers
(adopt Cal. Rules of Court, rule 44.5, amend rules 14(b), 15, 28(f)(3), and 56(k) and revise form APP-001)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
6.	Ms. Carole Greeley California Appellate Defense Counsel Bay Area Dependency Chapter	AM	N	Rule 39.1(d) states that in dependency appeals, the parties do not have to serve the Attorney General “notwithstanding rules 16© and 37(a).” I suggest that you amend rule 39.1(d) to say “notwithstanding rules 16(c), 37(a), and 44.5.”	Referred to the Juvenile Law Advisory Committee
7.	Ms. Diana Herbert Appellate Court Clerk’s Association	AM	Y	In Form APP-001, we are opposed to adding the new section E. Service Requirements in the proposed way, since it enlarges the form to three pages. This section applies to a small number of cases. Over 7,700 civil appeals were filed last year. The addition of this section as part of the mandatory form prevents it from being a single two-sided document. Every effort should be made to keep this form to two pages. It is possible to restructure the current form by eliminating some of the existing space between sections D and Part II and reworking, by renumbering if necessary, the items under Nature of Action to provide the space needed on the form to keep it at two pages.	Recommend re-formatting revised form APP-001 so that it is only 2 pages.